

SUMMARY OF TELEPHONIC INTERVIEW

Applicant appreciates the telephonic interview granted to Counsel for Applicant by the Examiner and Supervisor Griffin on October 7, 2008. Proposed amended claims were discussed in view of the art cited in the outstanding Office Action. No agreement was reached on claim allowability. Applicant agreed to submit a response to the outstanding Office Action containing the claims as discussed.

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons which follow.

Claim 1 is amended to expressly state that the aluminum foil cup tolerates temperatures of at least 300 degrees C. Support for this amendment is provided in the specification, e.g., in paragraph 28 (paragraph numbering as shown in published application); support for the reference to “inverted orientation” is provided in the specification in paragraph 13. Claim 1 is also amended to contain the reference to the thickness of the aluminum foil from prior claim 4. Claim 5 is amended change its dependency in view of the cancellation of claim 4. Support for new claim 19 is provided in the specification, for example in paragraph 18. Support for new claim 20 is provided in the specification, for example, in paragraphs 13 and 14. Thus no new matter is added.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, are presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-3, 5-13, 19, and 20 are now pending in this application.

Rejections under 35 U.S.C. §102

The Examiner rejected claims 1-7 and 13 under 35 USC 102(b) as allegedly being anticipated by Perlman (US5302344). The Examiner asserted that Perlman satisfied all the limitations of the rejected claims. Applicant respectfully traverses these rejections.

Contrary to the Examiner's assertions, there exist important distinctions between the "polyfoil" sheets of Perlman and the use of the aluminum foil cups as specified in the present claims.

First, the present claims all specify the use of "aluminum foil". Perlman does not concern the use of pre-formed aluminum foil cups, but rather "polyfoil" sheets which consist of a layer of a suitable plastic bonded with an aluminum foil layer forming an aluminum/plastic laminate structure. As a result, Perlman cannot anticipate the present claims because it fails to describe the use of "aluminum foil" cups.

Second, the present claims specify that the present aluminum cups provide "heat-resistant" closures. Such heat resistance is defined in Paragraph 28 which indicates that the aluminum cups tolerate temperatures of at least 300 degrees C. This temperature tolerance is expressly stated in amended claim 1. It is readily recognized that the "polyfoil" sheets of Perlman do not have even nearly this degree of temperature resistance because of the plastic layer laminated to the aluminum foil. Instead, Perlman indicates that the "polyfoil" sheets tolerate autoclave temperatures of about 120-121 degrees C (see, e.g., col. 3, line 3). In contrast, the much greater temperature resistance of the present aluminum foil cups allows them to be used in the oven and similar applications involving temperatures approximately 180 degrees C above autoclave temperatures.

Thus, because the "polyfoil" sheets of Perlman do not satisfy the temperature resistance specified in the present claims, and further is not "aluminum foil" as specified for the present invention, Perlman cannot anticipate any of these claims. As a result, Applicant respectfully

requests that the Examiner reconsider and withdraw these rejections as they may be considered in connection with the present claims.

Rejections under 35 U.S.C. §103

The Examiner rejected claims 1-7 and 13 as allegedly being unpatentable under 35 USC 103(a) over Perlman (US5302344). The Examiner asserts that Perlman discloses the method of covering an opening in a laboratory container with aluminum foil by providing a preformed aluminum foil cup, citing to Example 1 and Example 10 in Perlman. Applicant respectfully traverses these rejections.

As an initial point, in accordance with the discussion above in connection with rejections under 35 USC 102, the “polyfoil” described in Perlman is not “aluminum foil” as specified in the present claims, and further does not have the temperature resistance properties required by claim 1, i.e., tolerate temperatures of at least 300 degrees C, much higher than the 121 degrees C (autoclave temperatures) mentioned for the polyfoil sheets of Perlman.

In view of those differences in properties, Perlman does not suggest in any way the present preformed aluminum foil cups or their use for covering laboratory containers.

Furthermore, contrary to the Examiner’s assertion that Perlman describes shaping the foil cups using a mechanical forming die (citing Perlman col. 6, lines 65-68), the cited section deals with die cutting, not shaping into a cup. The result of such die cutting is a flat sheet or stack of sheets. The absence of the description of such forming of cups also applies to new claim 19. Thus, in addition failing to describe or suggest the use of aluminum foil cups as specified in present claim 1, Perlman also does not describe or suggest forming aluminum foil cups in the manner specified by claims 6 and 19.

The Examiner also rejected claims 1 and 8-12 under 35 USC 103(a) as allegedly being unpatentable over Perlman in view of PGC Scientifics (1995-1996).

In addition to the distinctions from Perlman discussed above, the “chemical weighing dishes” or “aluminum cups” cited by the Examiner in PGC Scientifics simply do not meet the requirements specified in the present claims. In particular, calculation of the thickness of the dishes in PGC Scientific (based on first calculating the volume of the aluminum in the cups from the weight of the cup and the density of aluminum, and then calculating the thickness of the aluminum from the area of the aluminum disc used to form the cup and the already calculated aluminum volume) shows that they are substantially thicker than specified in claim 1, having thicknesses of about 3 to nearly 5 mils (about 0.003 to nearly 0.005 inches). These thicknesses are exactly as indicated in the present specification in paragraph [0006] for aluminum weighing cups. As described in the present specification and as discussed in the telephonic interview, the chemical weighing dishes or aluminum cups are substantially too thick to function properly in the present invention (see paragraph [0006]). Unlike the present invention, the type of weighing cups described in the PGC Scientific document are intended to have sufficient strength to maintain their shape while a user is handling them, while the present cups are intended to be readily reshaped by hand to conform to the opening of a laboratory container with a friction fit.

Further, the reference in Perlman, Example 1, cited by the Examiner relating to the use of weighing dishes to cover laboratory containers is distinctly different from the method of the present claims. Due to the stiffness characteristics of such weighing dishes (due to the thickness of the aluminum), such use as covers concerns simply setting the dish over the container opening, similar to the manner in which loose stainless steel caps are commonly used to cover the openings of test tubes and culture flasks.

Thus, as discussed during the telephonic interview, there is no reason why a person of ordinary skill in the art would combine Perlman and the PGC document because the weighing cups described in the PGC document would not function as alternatives to the polyfoil sheets of Perlman; the applications are simply distinct. Furthermore, even if the references are combined, the combination does not lead to the present invention.

The distinctions from the cited art discussed above lead to the conclusion that the present invention is neither described nor suggested by that art. In addition, it should be understood that despite the prior availability of aluminum foil sheet, aluminum weighing cups, and aluminum/plastic laminates, no one had the insight to lead to the present invention. That is, no one realized that thin, contaminant-free aluminum foil cups fabricated from aluminum foil within the specified thickness range without the lubricant oils commonly used for manufacturing (see paragraphs [0007], [0039], and [0044]), are advantageous for use as shape-conforming coverings for laboratory containers. That failure of others to make the present invention despite the period of time available, further demonstrates that the present invention is patentable.

For the reasons discussed above, Applicant requests that the Examiner reconsider and withdraw these rejections.

Applicant respectfully submits that the application is in condition for allowance, and requests notice to that effect.

The Examiner is invited to contact the undersigned by telephone or email if helpful to advance the prosecution of the present application.

Respectfully submitted,

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